



C.R.P.(MD).No.1962 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(PD)(MD)No.1962 of 2018

and

C.M.P(MD) No.8248 of 2018

1. Karuppaiah

2. Mariappan

... Petitioners/Petitioners/
Counter claim Plaintiffs/
Defendants 2 and 3

-vs-

1. Irulaye

2. Maruthayee

... Respondents 1 and 2/
Respondents 1 and 2/
Counter Claim Defendants 1 & 2/
Plaintiffs

3. Ramar

4. Muthaiah

5. Krishnan

6. Pappathi

7. Mariappan

8. Sethu

9. Karuppasamy

10. Kothaalam

11. Kannan

12. Megala

... Respondents 3 to 12/
Respondents 3 to 12/
Counter Claim Defendants 3 to 12/
Defendants 1, 4 to 12



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13. Veluthevar
14. M.Mariappan
15. Mookammal
16. V.Muthaiah
17. Muthukrishnan
18. Petchi
19. Vasantha
20. Panju

... Respondents 13 to 20/
Respondents 13 to 20/
Proposed Counter Claim
Defendants 13 to 20/
3rd parties

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 06.11.2017 passed in I.A.No.392 of 2017 in Counter Claim in O.S.No.34 of 2007 on the file of the Sub Court, Aruppukottai.

For Petitioners : Mr.V.Perumal

For Respondents : Mr.S.Parthasarathy – for R1
: Mr.S.Premkumar – for R3 and R4
: Mr.K.C.Ramalingam – for R5 to R12
: Mr.C.Dhanaseelam – for R13 to R20
: No appearance – for R2

ORDER

The instant Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 06.11.2017 passed in I.A.No.392 of 2017 in Counter Claim in O.S.No.34 of 2007 on the file of the Sub Court, Aruppukottai.



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2. The petitioners herein are the defendants 2 and 3. The respondents 1 and 2 are the plaintiffs, the respondents 3 to 12 are the defendants 1 and 4 to 12 and the respondents 13 to 20 are the proposed parties.

3. The learned Counsel appearing for the petitioners would submit that they have filed the counter claim in respect of 25 properties, and to decide the counter-claim effectively the proposed parties namely, the respondents 13 to 20 herein are necessary parties. Hence, he prayed to implead them as defendants in the counter claim alone, and that the said application was dismissed by the trial Court. Aggrieved with the order, petitioners herein are before this Court.

4. The learned counsel for the petitioners would submit that in the suit for partition, they raised a counter-claim for declaration in respect of only 25 properties and would further submit that in order to prove the claim, the presence of the respondents 13 to 20 herein is very much essential as the defendants in the counter-claim. It is the further submission of the learned counsel for the petitioners that they are proper and necessary parties to the counter-claim and hence, he prayed to allow the application.



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5. The said application was stoutly objected by the learned counsel appearing for the respondents 1 and 2/plaintiffs, who would invite the attention of this Court to Order VIII Rule VI(A) of C.P.C, and would submit that, whenever the counter claim arises, it should be only against the defendants and it should be only against the cause of action which has been dealt in the plaint. Therefore, he would submit that no third party could be impleaded as the defendants to the counter-claim, which submission was also endorsed by the learned counsel for the respondents 3 to 12 and prayed to dismiss the application.

6. This Court has given it's anxious consideration to the submissions of the learned counsel on either side.

7. In order to understand the issue, this Court deems it appropriate to extract Order VIII Rule 6(A) of C.P.C as follows:

.....

6A. Counter – claim by defendant.- (1) *A defendant in a suit may, in addition to his right of pleading a set-off under Rule 6, set up by way of counter-claim against the claim of the plaintiff, any*



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right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not:

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

(2) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.

8. As per Order VIII Rule 6 (A) of C.P.C, it mandates that the counter-claim should be only against the plaintiff and in respect of a right or claim in respect of a cause of action accruing to the defendant against the plaintiff.



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Therefore, what is essential for a counter-claim is that the same should arise against the plaintiffs. Here, the petitioners would contend that though they have got a counter-claim against the plaintiffs for a better adjudication of the counter-claim, the respondents 13 to 20 become essential. But, while considering the provisions of Order VIII Rule 6 (A) of C.P.C, the impleadment of the defendants in the counter-claim will not arise, and the same is not in the frame work of Order VIII Rule 6 (A) of C.P.C.

9. In this regard, the learned counsel appearing for the respondents 1 and 2 has also relied upon the judgment of this Court reported in **2015 (1) MWN (Civil) 503 (Mad) (Ukravel Vs.Senthilmurugan and 4 others)**, wherein, in the similar case, this Court has held that the impleadment of defendants in the counter-claim is unknown to the Civil Procedure Code and rejected such an application. The ratio of the above judgment is squarely applicable to the case on hand.

10. Therefore, this Court is of the view that there is no infirmity in the order passed by the Court below.



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11. In the result, this Civil Revision Petition is **dismissed**. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The Sub Court,
Aruppukottai.



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C.KUMARAPPAN,J.

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